

## STAFF REPORT

TO: Public Safety Committee

DATE: February 23, 2015

FROM: Martha W. McGlohon, Deputy City Attorney

Subject: E-Cigarettes

**Summary Statement:** The consideration of an ordinance amending Chapter 11 of the Code of Ordinances of the City of Asheville pertaining to Smoking.

**Review:** The use of e-cigarettes, a noncombustible product that employs a mechanical heating element, battery, or electronic circuit regardless of shape or size and that can be used to heat a liquid nicotine solution contained in a vapor cartridge, continues to gain popularity among traditional cigarette smokers. Following a number of complaints from riders of the City’s transit buses, pertaining to secondhand exposure to vapors released from e-cigarettes, the City’s Transit Committee asked that the City’s Smoking Ordinance be amended to include e-cigarettes.

Since e-cigarettes are not lighted tobacco products, they cannot be regulated the same as traditional cigarettes under Chapter 130A of the North Carolina General Statutes. Research revealed that the Federal Government and North Carolina State Government were both considering legislation to regulate the use of e-cigarettes, and perhaps totally pre-empt local regulation. Although the Federal Drug and Food Administration and the State of North Carolina have enacted rules/legislation respectively, regulating the sale and distribution of e-cigarettes to minors, neither pre-empts local regulation. According to the School of Government, the City may (and many North Carolina cities and counties have), adopt an ordinance regulating the use of e-cigarettes under Chapter 160A-174 of the North Carolina General Statutes, known as the “Police Powers.” Chapter 160A-174 allows the City to define, regulate, prohibit, or abate acts, omissions, or conditions detrimental to the health, safety or welfare of citizens.

While the long term health effects of exposure to 2<sup>nd</sup> hand vapors emitted from e-cigarettes are unknown, according to a Study conducted by the Federal Drug and Food Administration, on 2 leading e-cigarette brands, there was evidence of toxic chemicals in both. Critics point to Studies revealing that exhaling vapors from e-cigarettes releases measurable amounts of carcinogens and toxins into the air. Finally, in the last six months, there have been battery explosions either during charging of the e-cigarette or while in use.

The proposed ordinance prohibits the use of e-cigarettes to the same extent as traditional lighted cigarettes with enforcement being the same as traditional lighted cigarettes.

Pros:

- Allows for the regulation and enforcement of e-cigarettes the same as traditional lighted cigarettes
- Provides for High Quality of Life by making Asheville safer and encourages public health and safety for the City of Asheville employees and citizens.

Con:

- Require additional signage to be placed alongside the current “No Smoking” signs

**Fiscal Impact:** Staff is not able to accurately estimate the impact at this time.

**Recommendation:** Staff requests that City Council adopt the amended ordinance to regulate e-cigarettes to the same extent as traditional lighted cigarettes.